

### **REMARKS/ARGUMENTS**

Applicants thank Dr. Swartz for the telephone interview on September 10, 2008, to discuss the standing rejections under 35 U.S.C. §112, second paragraph. During the interview, the meaning of the term “gene fragment” was discussed. The contents of Figure 1 were also discussed. An agreement was reached that the term “gene fragment” is not indefinite for at least the reasons discussed below.

Claims 1-5 and 8-16 stand rejected under 35 U.S.C. §112, second paragraph, as being indefinite for the following reasons: (1) it is unclear what constitutes a “gene fragment” as recited in the claims and (2) because the primers would also amplify the entire hsp 65 gene.

With regard to point (1), Applicants note that the term “gene fragment” is not unclear in light of the teachings provided in the detailed description and Examples 3 and 4, for example, of the present specification. Further, Applicants note that the term ‘gene fragment’ is clearly defined by the specific primer set of SEQ ID NOs: 55 and 56. For instance, paragraph [0026] of the present specification discusses an amplifying means comprising a pair of primers for amplifying the 604-bp hsp 65 gene fragment. Also see paragraphs [0039] and [0063] in addition to Examples 3 and 4. As such, Applicants respectfully submit that the term ‘gene fragment’ is clear to one of ordinary skill in the art.

Regarding point (2), Applicants note that the primers would not amplify the entire hsp 65 gene. To the contrary, the primer set of SEQ ID NOs: 55 and 56 amplified only 604-bp hsp 65 gene fragment of mycobacterial species, not the entire hsp 65 gene. See paragraph [0026], [0039], [0063] and Examples 3 - 4 of the published application.


Applicants respectfully submit that all rejections under 35 U.S.C. §112, second paragraph, are overcome for at least the foregoing remarks. As such, Applicants request withdrawal of all rejections under 35 U.S.C. §112, second paragraph.

In view of the remarks made above, Applicants submit that the pending claims are now in condition for allowance. Applicants respectfully request that the claims be allowed to issue. If the Examiner wishes to discuss the application or the comments herein, the Examiner is urged to contact the undersigned by telephone.

Application No.: 10/500,586  
Response Dated 10/10/2008  
Reply to Office Action of 07/10/2008

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'John E. Johnson, III', written over a horizontal line.

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LEGAL02/30943726v1

**ELECTRONICALLY FILED USING THE EFS-WEB ELECTRONIC FILING SYSTEM OF THE UNITED STATES PATENT & TRADEMARK OFFICE ON October 10, 2008.**